

material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Director shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10 day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Director's decision. In no event shall the proposed action take effect until notice of the Director's decision is published in the FEDERAL REGISTER.

**§ 18.34 Guidelines for use in safely deterring polar bears.**

(a) These guidelines are intended for use in safely deterring polar bears in the wild. They provide acceptable types of deterrence actions that any person, or their employee, or their agent, can use to deter a polar bear from damaging private property; or that any person can use to deter a polar bear from endangering personal safety; or that a government employee can use to deter a polar bear from damaging public property, and not cause the serious injury or death of a polar bear. Anyone acting in such a manner and conducting activities that comply with the guidelines in this subpart does not need authorization under the MMPA to conduct such deterrence. Furthermore, actions consistent with these guidelines do not violate the take prohibitions of the MMPA or this part. A Federal, State or local government official or employee may take a polar bear in the course of his duties as an official or employee, as long as such taking is accomplished in accordance with § 18.22 of this part.

(b) There are two types of deterrence measures that a person, or their employee, or their agent could follow to nonlethally deter a polar bear. Each type of measure includes a suite of appropriate actions that the public may use.

(1) *Passive deterrence measures.* Passive deterrence measures are those

that prevent polar bears from gaining access to property or people. These measures provide for human safety and do not increase the risk of serious injury or death of a polar bear. They include:

(i) *Rigid fencing.* Rigid fencing and other fixed barriers such as gates and fence skirting can be used around buildings or areas to limit bears from accessing community or industrial sites and buildings. Fencing areas 5 acres (~2 ha) and smaller can be used to limit human-bear interactions. Industry standard chain-link fencing material can be used. Chain-link fencing can be placed around buildings on pilings as fence skirting to limit access of bears underneath the buildings.

(ii) *Bear exclusion cages.* Bear exclusion cages provide a protective shelter for people in areas frequented by bears. Cages erected at building entry and exit points exclude polar bears from the immediate area and allow safe entry and exit for persons gaining access to, or leaving, a building should a polar bear be in the vicinity. Additionally, they provide an opportunity for people exiting a building to conduct a visual scan upon exit. Such a scan is especially important in areas where buildings are constructed above ground level due to permafrost because bears may be resting underneath. These cages can be used at homes or industrial facilities to deter bears as well. Cages can be used in remote areas where bear use is not known, and along bear travel corridors, e.g., within 0.5 mile from coastline, to deter bears from facilities. Cages must be no smaller than 4 ft (width) by 4 ft (length) by 8 ft (height). Bars must be no smaller than 1 inch wide. Distance between bars must be no more than 4 inches clear on stairways and landings or when otherwise attached to a habitable structure; they may be no more than 5 inches clear for use in cages not attached to any habitable structure. A 4-inch distance between the bars would be sufficient to prevent a bear from reaching through, while providing visible space between bars. The ceiling of the cage must be enclosed.

(iii) *Bear-resistant garbage containers.* Bear-resistant garbage containers prevent bears from accessing garbage as a

food source and limit polar bears from becoming food-conditioned or habituated to people and facilities. The absence of habituation further reduces the potential for bear-human interactions. Bear-resistant garbage cans and garbage bins are manufactured by various companies and in various sizes. Commercially designed residential bear-resistant containers (32–130 gallons) can be used. Two- to 6-cubic yard containers can be specifically designed by commercial vendors as bear-proof containers or have industry-standard lid locks to prohibit bear entry, depending on the need and location. For remote seasonal camps, garbage can be temporarily stored in steel drums secured with locking rings and a gasket, and removed from the site when transportation is available. Larger garbage containers, such as dumpsters or “roll-offs” (20 to 40 cubic yards), can limit bear-human interactions when the containers have bear-proof lids. Lids must be constructed of heavy steel tubing or similarly constructed with heavy expanded metal.

(2) *Preventive deterrence measures.* Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. These measures provide for safe human use and do not increase the risk of serious injury or death of a polar bear. These are:

(i) *Acoustic devices.* Acoustic deterrent devices may be used to create an auditory disturbance causing polar bears to move away from the affected area. The reasonable use of loud noises, e.g., vehicle engines, automobile sirens or horns, and air-horns, where such auditory stimuli could startle a bear and disrupt its approach to property or people, is authorized. This authorization is limited to deterrent devices with a sound strength of no greater than 140 dB SPL to be deployed for no more than a 30-second continuous time interval. The use of commercially available air horns or other audible products used as perimeter alarms, which create sounds that fall below this upper limit, is acceptable.

(ii) *Vehicle or boat deterrence.* Patrolling the periphery of a compound or encampment using a vehicle, such as a truck or all-terrain vehicle (e.g., a

snowmobile or a four wheeler), and deterring, but not chasing, polar bears with engine noise, or by blocking their approach without making a physical contact with the animal, is an acceptable preventive deterrence. Similarly patrolling an area in a small boat using similar methods is acceptable.

(c) The deterrence guidelines are passive or preventive in nature. Any action to deter polar bears that goes beyond these specific measures could result in a taking and, unless otherwise exempted under the MMPA, would require separate authorization. The Service acknowledges that there will be numerous new techniques developed, or new applications of existing techniques, for deterring bears. The Service will work to establish a system for evaluating new bear deterrence applications and techniques and will update this set of guidelines with examples of future approved methods. Deterrence actions (other than the measures described in these guidelines) that do not result in serious injury or death to a polar bear remain permissible for persons identified in section 101(a)(4)(A) of the MMPA. Prior to conducting activities beyond those specifically described in these guidelines, persons should contact the Service’s Alaska Regional Office’s Marine Mammal Program for further guidance (for the location of the Alaska Regional Office see 50 CFR 2.2(g)).

[75 FR 61637, Oct. 6, 2010]

### **Subpart E—Depleted Species or Stocks [Reserved]**

### **Subpart F—Transfer of Management Authority to States**

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of the Interior are found at part 403 of this title.

[48 FR 22456, May 18, 1983]

### **Subpart G—Notice and Hearing on Section 103 Regulations**

SOURCE: 41 FR 5396, Feb. 6, 1976, unless otherwise noted.